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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 RODERICK OLAF FONSECA,

12 Plaintiff,

13 vs.

14 CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,

15 Defendants.
16

CASE NO. 14cv787-LAB (BLM)

**ORDER RE: SUPPLEMENTAL
PLEADING**

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18 Defendants moved to dismiss Plaintiff Roderick Fonseca's complaint, and Fonseca
19 moved for a preliminary injunction. Both motions were referred to Magistrate Judge Barbara
20 Major for report and recommendation. Judge Major received briefing, and on June 10 issued
21 her report and recommendation. The Court later rejected it and issued its own ruling, granting
22 the motion to dismiss and denying the motion for preliminary injunction. Fonseca then took
23 an appeal, which is now pending.

24 It appears Fonseca also submitted what he intended to be a supplemental brief either
25 in support of his opposition to the motion to dismiss or in support of his motion for preliminary
26 injunction. He dated this document June 10, 2015. Because of administrative delay, that
27 document was not docketed until after the Court had dismissed the complaint and Fonseca
28 had taken an appeal.

1 Assuming Fonseca intended this document as supplemental briefing on the motion
2 to dismiss, he submitted it far too late. See *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir.1987)
3 (“Pro se litigants must follow the same rules of procedure that govern other litigants.”) If he
4 intended it as a reply brief on the motion for preliminary injunction, he was not given leave
5 to file such a document. (See Docket no. 18 (Judge Major's Scheduling Order on Motion for
6 Preliminary Injunction).)

7 These are not merely minor technical slip-ups; Fonseca's tardy or unauthorized filing
8 prevented Judge Major from taking his supplemental document into account when drafting
9 and issuing her report and recommendation. Nor can it have been intended as objections to
10 the report and recommendation, because Fonseca had not even seen the report and
11 recommendation when he wrote the document. Because this case is on appeal, the Court
12 lacks jurisdiction to reverse its decision and so cannot construe it as a motion for
13 reconsideration of the Court's ruling.

14 The motion does, however, request that defense counsel be admonished or
15 disciplined for making false representations to the Court. The notice of appeal deprives the
16 Court only of jurisdiction over the issues appealed, see *Stein v. Wood*, 127 F.3d 1187, 1189
17 (9th Cir. 1997), so it appears the Court retains jurisdiction over attorney discipline. That being
18 said, the document's claims of unethical or unprofessional conduct are groundless. The
19 supposedly perjured testimony Fonseca points to merely embodies a dispute of law about
20 whether fish is or is not counted as meat for purposes of the prison kosher diet. Even if the
21 record supported Fonseca's charges of mendacity, which it does not, the witness' opinion on
22 the legal status of fish was immaterial. Finally, even if the document had been docketed in
23 time, it would have changed nothing. The Court considered and rejected Fonseca's argument
24 about fish in the prison kosher diet, and nothing in the supplemental document would change
25 that.

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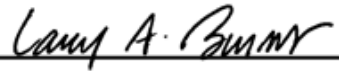
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1 In short, for whatever purpose the supplemental document was offered, it is
2 unpersuasive. Fonseca's request that the witness and defense counsel be disciplined or
3 admonished is **DENIED**.

4 **IT IS SO ORDERED.**

5 DATED: August 13, 2015

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7 **HONORABLE LARRY ALAN BURNS**
8 United States District Judge
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